

# Congress of the United States

Washington, DC 20515

April 23, 2002

The Honorable R. Hewitt Pate  
Deputy Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Mr. Pate:

We are writing to express our concern about potential anti-competitive effects of Orbitz, the online travel venture jointly owned by the five largest U.S. airlines, on the travel industry, e-commerce and consumers. We respectfully request that the Justice Department intensify its ongoing investigation of the antitrust implications of Orbitz, including its formation and its business practices.

Since the launch of the first on-line travel sites in 1996, online travel has become the largest e-commerce sector, with \$20 billion of sales in 2001. The growth of independent websites has brought considerable benefits to consumers, giving them access to innovative technology and more choice in travel options.

In response to the growth of the independent websites, the five largest U.S. airlines formed the Orbitz online travel joint venture, which launched in June 2001. Prior to the launch of Orbitz, concerns were raised regarding the possible anti-competitive nature of the venture. Today, Orbitz is no longer a theoretical threat. Market experience over the last several months indicates that the contract terms and incentives contained in the Orbitz agreement raise significant antitrust concerns.

In just six months, the airline-owned Orbitz venture became the second largest online seller of travel and remains among the top three. While a fully competitive online travel marketplace offers consumers many benefits, we are concerned that Orbitz has accomplished this remarkable growth through the use of exclusivity incentives and most favored nations clauses which, in practice, have given Orbitz access to lower fares and inventory from its airline owners which have not been made available to other independent online and offline travel services.

The major airline owners of Orbitz appear to be using this joint venture to restrict output of critical travel information, to shift the costs of online travel distribution to consumers, and to steer traffic away from smaller carriers. We are concerned that these developments are evidence of consumer harm that will inevitably worsen without appropriate action.

Specifically, our concerns relate to the following areas of Orbitz's structure and the potential negative effects of this structure on competition in the online and offline travel industry:

- Most-favored nation clauses: The Orbitz agreement requires that participating airlines provide to Orbitz all published fares available on the airlines' own websites

and reservation systems and all fares provided to any competing travel agencies. The most-favored nation clauses ensure that Orbitz consistently has access to the best available fares and that competing travel ventures, both online and offline, do not have any opportunity to engage in exclusive promotional ventures with the major airline carriers. In effect, the airline owners of Orbitz are discouraged from ever offering to other travel ventures access to fares which will not also be made available on the Orbitz site.

- In-kind promotion: The in-kind promotion clause in the Orbitz agreement induces carriers to fulfill their in-kind promotion obligation by giving web fares to Orbitz and denying the full array of web fares to Orbitz's competitors. As part of the Orbitz agreement, the major carriers must meet certain in-kind promotion requirements. According to the agreement, one manner in which the airlines may fulfill this obligation is to provide web-only fares exclusively to Orbitz and to deny access to these web fares to competing online and offline agencies. This portion of the Orbitz structure encourages long term exclusivity for Orbitz and may be facilitating an agreement by which independent agencies are denied comprehensive access to low fare inventory that consumers most want. When Orbitz's Chief Financial Officer was recently asked at an industry conference whether Orbitz could count on exclusivity on the airline web fares even if it took on board non-airline owners, he responded by touting Orbitz's "10-year agreements with most of the major carriers, and those agreements are one (s) that will stand the test of time because they're mutually beneficial, and they're always designed to be highly motivational from both sides, regardless of ownership interests."

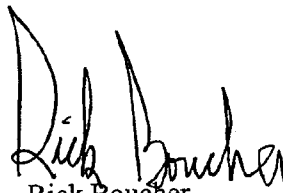
We urge you to renew the ongoing investigation of Orbitz and competition in the travel sector, including an examination of all relevant agreements and understandings between the airlines and Orbitz, and all relevant market data related to the Orbitz venture.

Thank you for your expeditious consideration of this matter.

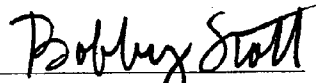
Sincerely,



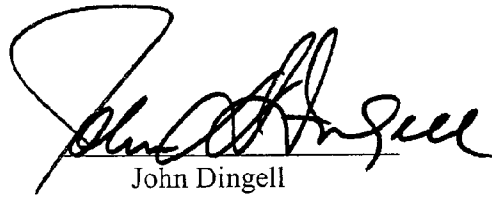
Bob Goodlatte  
Member of Congress




Rick Boucher  
Member of Congress



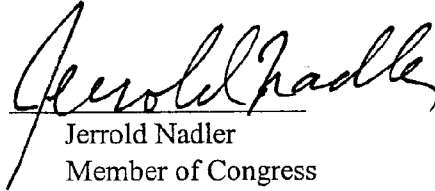
Bobby Scott  
Member of Congress



John Dingell  
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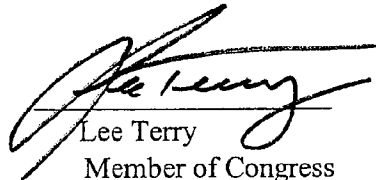
John Baldacci  
Member of Congress



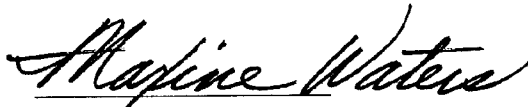
Jerrold Nadler  
Member of Congress



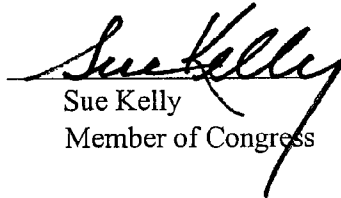
Barney Frank  
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Maxine Waters  
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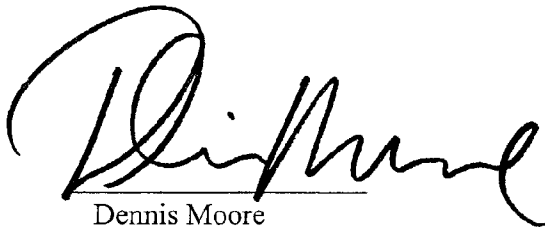
Sue Kelly  
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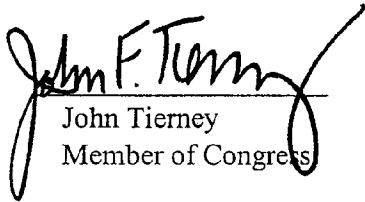
Steve Israel  
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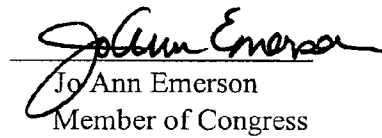
Dennis Moore  
Member of Congress



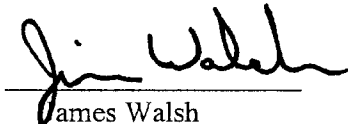
Paul Kanjorski  
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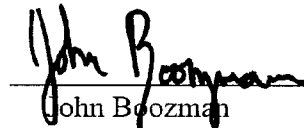
John Tierney  
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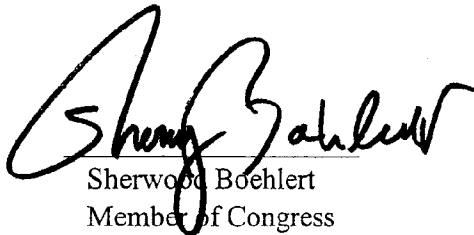
Jo Ann Emerson  
Member of Congress



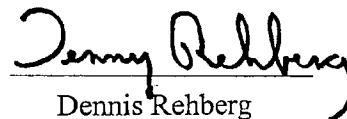
James Walsh  
Member of Congress



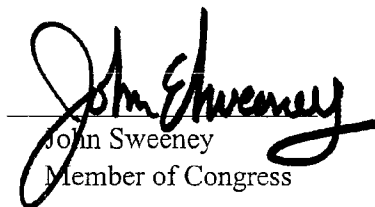
John Boozman  
Member of Congress



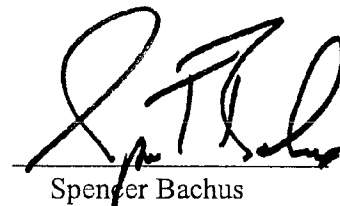
Sherwood Boehlert  
Member of Congress



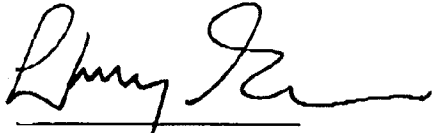
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Member of Congress



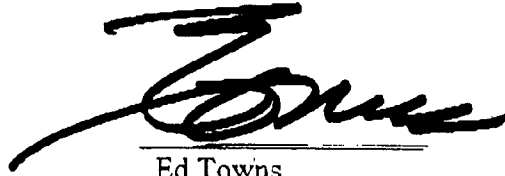
John Sweeney  
Member of Congress



Spencer Bachus  
Member of Congress

A handwritten signature in black ink, appearing to read 'Lindsey Graham', written over a horizontal line.

Lindsey Graham  
Member of Congress

A handwritten signature in black ink, appearing to read 'Ed Towns', written over a horizontal line.

Ed Towns  
Member of Congress